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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,340	06/27/2001	Robert A. Rousseau	ETH-1507	3554
27614	7590	02/23/2005	EXAMINER	
RALPH W. SELITTO, JR. C/O MCCARTER & ENGLISH, LLP GATEWAY CENTER FOUR 100 MULBERRY STREET NEWARK, NJ 07102			LANDREM, KAMRIN R	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/892,340	Applicant(s) ROUSSEAU, ROBERT A.	
	Examiner Kamrin R. Landrem	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/04 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 4, 5, 6, 11, 13, 14, 15, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Gianturco (EP 0554485 B1).

With regards to Figure 10 and 12 Gianturco discloses a biocompatible circular prosthetic mesh system adapted for implantation into a body comprising a flexible mesh layer, the mesh layer having a generally flat shape when it is in a first condition (Fig. 10) and a generally collapsed shaped when in its second condition (Fig. 12). The mesh layer has a ridge formed therein that is irremovably therewith and projecting therefrom in a direction substantially perpendicular to said mesh layer when said mesh layer is in said first flat condition. The ridge is formed of a thin piece of Nitinol and is therefore sized and capable of facilitating movement

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from its collapsed configuration to an expanded flat configuration after being implanted in the body (11:1-12:5). The patch may be used to repair a hernia (12:6-13). The Nitinol ridge undergoes a thermoforming process to set the ring to a predetermined configuration (11:1-17). Figure 10 discloses a plurality of ridges 115 in ring/loop configurations about the circular mesh system.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gianturco in view of Bendavid et al (USPN 4,769,038).

Gianturco as discussed above, discloses the prosthetic mesh system as claimed. Gianturco however fails to disclose another mesh layer connecting to said mesh layer. With reference to Figure 1 Bendavid teaches a prosthetic mesh system comprising biocompatible, flexible mesh layers 12,16 and another mesh layer 14 connected to said mesh layers 12,16 by connecting means 18 to provide a prosthetic mesh with an arrangement of layers that enable the herniated muscles to be reconstructed with the layers of the prosthesis in a manner which does not stretch the musculature. Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the prosthetic mesh as disclosed by Gianturco by incorporating an additional mesh layer as taught by Bendavid in

order to provide a prosthesis with a structure that reduces the stretching of the musculature and minimizes the risk for re-injuring the herniated muscle.

Claims 8, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianturco as modified by Bendavid and further in view of Gonzalez (WO 97/22310).

As discussed above, Gianturco as modified by Bendavid, discloses the prosthetic mesh assembly as claimed. While Gianturco suggests that any shape prosthetic mesh may be used (13:5+), Gianturco as modified by Bendavid fails to disclose the particular shape of the mesh as claimed by the applicant. Gonzalez teaches a biocompatible, flexible prosthetic mesh assembly in a circular configuration with a ridge formed concentrically about the perimeter of the mesh to provide self-unfolding device that simplifies surgical procedures (abstract). Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the prosthetic mesh as disclosed by Gianturco by forming the ridge concentrically about the perimeter of the device to provide a self-unfolding hernia patch that reduces the need of stitches and/or staples and reduces the difficulty of implantation.

Response to Arguments

Applicant's arguments with respect to claims 1-15, 21 and 22 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamrin R. Landrem whose telephone number is 571-272-4752.


The examiner can normally be reached on 8:00-5:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kamrin Landrem
Examiner
AU 3738

krl


CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700